



CHAPTER 25

DEMAND &

RECOVERY

**CHAPTER OVERVIEW**

SECTION	TOPIC
3	Hierarchy of Officers under GST
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud etc.
74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason by reason of fraud etc.
75	General provisions relating to determination of tax
76	Tax collected but not paid to Government
77	Tax wrongfully collected and paid to Central Government or State Government
78	Initiation of recovery proceedings
79	Recovery of tax
80	Payment of tax and other amount in instalments
81	Transfer of property to be void in certain cases
82	Tax to be first charge on property
83	Provisional attachment to protect revenue in certain cases
84	Continuation and validation of certain recovery proceedings
	Relevant Forms in Demand and Recovery



HIERARCHY OF OFFICERS UNDER GST [SECTION 3]

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

Provided that the **officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.**

The Board may, by order, authorise any officer referred to in clauses **(a) to (h) of section 3** to appoint officers of central tax **below the rank of Assistant Commissioner of central tax for the administration of this Act.**

**DEMAND PROVISIONS UNDER GST****DETERMINATION OF TAX NOT PAID / SHORT PAID / ERRONEOUSLY REFUNDED / ITC WRONGLY AVAILED / UTILISED [SECTION 73 & 74]**

Section 73 and section 74 of the CGST Act deal with the manner in which the tax liability of a person should be determined in case of short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utilisation of ITC.

Such liability may arise because of following reasons:

- (a) An inadvertent bonafide mistake (**Normal Cases**) or
- (b) A deliberate attempt (**Fraud Cases**) to evade the tax

ISSUANCE OF SHOW CAUSE NOTICE (SCN) AND DEMAND ORDER

Particulars	Other than Fraud or willful misstatement or suppression of facts [Section 73]	Fraud or willful misstatement or suppression of facts [Section 74]
Serving of Show Cause Notice [Section 73(1) and 74(1)]	The proper officer shall serve notice on the person chargeable with tax requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon u/s 50 and penalty leviable under the provisions of this Act or the rules made thereunder	The proper officer shall serve notice on the person chargeable with tax requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon u/s 50 and penalty equivalent to the tax specified in the notice
Time limit for issuance of SCN [Section 73(2) and 74(2)]	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. In short, at least 3 months prior to the time limit specified in Section 73(10) for issuance of order.	Within 4 years and 6 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. In short, at least 6 months prior to the time limit specified in Section 73(10) for issuance of order.
Statement containing details	Where notice has been issued u/s 73(1), the proper officer may serve a	Where notice has been issued u/s 74(1), the proper officer may serve a



DEMAND & RECOVERY

<p>of tax for other period [Section 73(3) and 74(3)]</p>	<p>statement, containing the details of tax not paid for such periods other than those covered in normal period, on the person chargeable with tax</p>	<p>statement, containing the details of tax not paid for such periods other than those covered in normal period, on the person chargeable with tax</p>
<p>Statement deemed to be SCN [Section 73(4) and 74(4)]</p>	<p>The service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for such tax periods other than those covered are the same as are mentioned in the earlier notice</p>	<p>The service of statement shall be deemed to be service of notice under Section 73(1), subject to the condition that the grounds relied upon in the said statement, <i>except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax,</i> for periods other than those covered above are the same as are mentioned in the earlier notice.</p>
<p>Voluntary payment before serving of Show cause notice [Section 73(5) and 74(5)]</p>	<p>The person chargeable with tax may, before service of notice u/s 73(1) or the statement u/s 73(3) pay amount of tax along with interest u/s 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.</p>	<p>The person chargeable with tax may, before service of notice u/s 74(1) pay</p> <ul style="list-style-type: none"> • the amount of tax along with interest payable u/s 50 and a • penalty equivalent to 15% of such tax <p>on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.</p>
<p>Non-serving of Show cause notice [Section 73(6) and 74(6)]</p>	<p>The proper officer, on receipt of such information, shall not serve any notice u/s 73(1) or statement u/s 73(3) in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.</p>	<p>The proper officer, on receipt of such information, shall not serve any notice in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.</p>
<p>Serving of SCN if voluntary payment falls short [Section 73(7) and 74(7)]</p>	<p>Where the proper officer is of the opinion that the amount paid u/s 73(5) (Voluntary payment) falls short of the amount actually payable, he shall proceed to issue SCN as provided for u/s 73(1) in respect of such amount which falls short of the amount actually payable</p>	<p>Where the proper officer is of the opinion that the amount paid u/s 74(5) (Voluntary payment) falls short of the amount actually payable, he shall proceed to issue SCN as provided for u/s 74(1) in respect of such amount which falls short of the amount actually payable</p>



DEMAND & RECOVERY

<p>Payment of tax after serving of SCN [Section 73(8) and 74(8)]</p>	<p>Where any person chargeable with tax u/s 73(1) or 73(3) pays the said tax along with interest payable u/s 50 <u>within 30 days of issue of SCN,</u></p> <p>No penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.</p>	<p>Where any person chargeable with tax u/s 74(1) pays the said tax along with interest payable u/s 50 and penalty equivalent to 25% of such tax within 30 days of issue of the notice,</p> <p>All proceedings in respect of the said notice shall be deemed to be concluded.</p> <ul style="list-style-type: none"> • The assessee shall intimate the proper officer of such payment in Form GST DRC-03 • The proper officer shall issue an acknowledgement, accepting the payment made by the said person in Form GST DRC-04. • The proper officer shall issue an order in Form GST DRC-05 concluding the proceedings in respect of the said notice.
<p>Adjudication of demand order [Section 73(9) and 74(9)]</p>	<p>The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, due from such person and issue an order.</p>	<p>The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.</p>
<p>Time limit to pass order [Section 73(10) and 74(10)]</p>	<p>Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or within 3 years from the date of erroneous refund</p>	<p>Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.</p>
<p>Reduced penalty if payment within 30 days of passing adjudication order [Section 73(11) and 74(11)]</p>	<p>Notwithstanding anything contained in Section 73(6) or 73(8), Penalty u/s 73(9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within 30 days from the due date of payment of such tax</p>	<p>Where any person served with an order pays the tax along with interest payable u/s 50 and a penalty of 50% of such tax within 30 days of communication of the order, <u>all proceedings in respect of the said notice shall be deemed to be concluded.</u></p>



DEMAND & RECOVERY

Explanation 1: For the purposes of section 73 and 74,

- (i) the expression “**all proceedings in respect of the said notice**” shall not include proceedings u/s 132;
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, **and such proceedings against the main person have been concluded u/s 73 or 74**, the proceedings against all the persons liable to pay penalty u/s 122 & 125 are **deemed to be concluded**.

Liable to pay penalty u/s 122 (penalty for specified offences), 125 (general penalty). **This makes detention, seizure and confiscation of goods and conveyances in transit a separate proceeding.**

Explanation 2: For the purposes of this Act, the expression “**suppression**” shall mean

- (i) non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
- (ii) failure to furnish any information on being asked for, in writing, by the proper officer.

Time Limit for Issue of Notice, Penalty and Adjudication u/s 73 and 74

Payment of Penalty	Amount of Penalty	
	Section 73	Section 74
Dues paid before issuance of show cause notice	No penalty	15% of tax amount due
Dues paid within 30 days of issuance of show cause notice	No penalty	25% of tax amount due
Dues paid after 30 days of issuance of Order	10% of tax due or ₹ 10,000 whichever is higher	50% of tax amount due
Any other case		100% of tax amount due

Calculation of Time Limit for issuance of Notice u/s 73 and 74

Relevant Financial Year	2017-18	2019-20
Due Date for filing of Annual Return	31/12/2018	31/12/2020
Add: Time period u/s 73(10)/74(1) of 3 years/5 years from the due date of furnishing annual return	3 years	5 years
Time Period for issuance of order as per Section 73(10)/74(1)	31/12/2021	31/12/2025
Less: Notice to be issued u/s 73(2)/ 74(2) at least 3/6 months prior to the due date as per Section 73(10)/74(10)	3 months	6 months
Time period within which notice u/s 73(1)/ 74(1) to be issued	30/09/2021	30/06/2025



Comparative Analysis of Section 73 & 74 of the CGST Act, 2017

Basis of Comparison	Section 73	Section 74
Applicability	Non-payment or short payment of tax without fraud or wilful misstatement or suppression of facts	Non-payment or short payment of tax with fraud or wilful misstatement or suppression of facts
Time limit for proper officer to issue notice	At least 3 months prior to issuance of order	At least 6 months prior to issuance of order
Time limit for proper officer to issue order	Within 3 years from the due date for furnishing of annual return	Within 5 years from the due date for furnishing of annual return
Penalty – before issuance of show cause notice	No penalty	15% of the tax amount
Penalty – within 30 days after the issuance of show cause notice	No penalty	25% of the tax amount
Penalty – after 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs.10,000, whichever is higher	50% of the tax amount
In any other case	10% of tax or Rs.10,000, whichever is higher	100% of the tax amount (equivalent to tax)

**Circular specifying Proper officer u/s 73 and 74 of the CGST Act and IGST Act and fixing monetary limits for issuance of show cause notices by different level of officers
[Circular No. 31/05/2018 – GST dated 09.02.2018]**

Monetary limit of the amount of central tax (including cess)/IGST not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders u/s 73 and 74 of CGST Act

Officer of Central Tax	CGST (including cess)	IGST (including cess)	CGST & IGST (including cess)
Superintendent of Central Tax	≤ ₹ 10 lakhs	≤ ₹ 20 lakhs	≤ ₹ 20 lakhs
Deputy or Assistant Commissioner of Central Tax	> ₹ 10 lakhs ≤ ₹ 1 crore	> ₹ 20 lakhs ≤ ₹ 2 crore	> ₹ 20 lakhs ≤ ₹ 2 crore
Additional or Joint Commissioner of Central Tax	> ₹ 1 crore without any limit	> ₹ 2 crore without any limit	> ₹ 2 crore without any limit



DEMAND & RECOVERY

The CGST officers of Audit Commissionerate's and Directorate General of Goods and Services Tax Intelligence ("DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent CGST officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerate's, the show cause notice shall be adjudicated by the competent CGST officer in whose jurisdiction, **the principal place of business of the noticee from whom the highest demand of CGST and/or IGST (including cess) has been made falls.**

Notwithstanding anything contained in above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerate's and where the CGST and/or IGST (including cess) involved **is more than ₹ 5 crores** shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent **to decide the case involving the highest amount of CGST and/or IGST (including cess).**

Clarification on levy of penalty under section 73 of the CGST Act in case of delayed filing of return: [Circular No. 76/50/2018-GST, dated 31.12.2018]

Issue: Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return?

Clarification: As per Section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within 30 days from the due date of payment of such tax.

The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty u/s 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty u/s 125 of the CGST Act may be imposed after following the due process of law.

**Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation**

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial/full GST liability arising out of the issue pointed out by the Department during the course of such search, inspection or investigation. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability have alleged use of force and coercion by the officers for making recovery during the course of search, inspection or investigation.

Under the CGST Act, the taxpayers have an option to make voluntary payment of tax. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5). This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where “**recovery**” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings.

However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments. [Instruction No. 01/2022-23 [GST-Investigation] dated 25.05.2022]

**GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [Section 75]**

- 1. Period of stay:** Period of stay ordered by Court or Tribunal on service of SCN issued u/s 73(2) and 74(2) and adjudication order passed u/s 73(10) and 74(10) to be excluded for determining period of limitation (i.e. 3 years or 5 years).
- 2. Deemed Notice:** Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under Section 74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under Section 73(1). *[Refer Circular mentioned below]*
- 3. Order issued in pursuance of the Court:** Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued **within 2 years from the date of communication of the said direction.**
- 4. Opportunity of being heard:** An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person
- 5. Adjournment not more than 3 times:** The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing. No such adjournment shall be granted for more than **3 times** to a person during the proceedings.
- 6. Order should not be passed more than the demand mentioned in SCN:** The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
- 7. Court findings are final:** Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly after taking into account the amount of tax so modified.
- 8. Interest mandatory:** The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
- 9. Time barred Orders:** The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3/5 years as the case may be u/s 73 and 74.
- 10. Recovery of tax:** Notwithstanding anything contained in section 73 or section 74, where
 - any amount of **self-assessed tax** in accordance with a return furnished u/s 39 remains unpaid, either wholly or partly, or
 - any amount of **interest payable on such tax remains unpaid,**the same shall be **recovered under Section 79 (i.e. recovery of tax from various modes).**



‘Explanation: For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.’. [Explanation added in Section 75(12) vide FA 2021 notified from 1st January 2022]

In other words, where the tax payable in respect of details of outward supplies furnished in GSTR-1, has not been paid through GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79. However, the difference/mis-match between details of GSTR-1 and GSTR-3B may arise due to genuine reasons mentioned below:

- a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR-1 or GSTR-3B, or
- where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR-1 of the current tax period.

Instruction No. 01/2022 GST dated 07/01/2022 provides that in case of mis-match between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.

- 11. Penalty only once: No penalty for the same act or omission** shall be imposed on the same person under any other provision of this Act where any penalty is imposed under section 73 or section 74.
- 12. In case of appeal filed by Department against prejudicial decision of the Appellate Authority/Appellate Tribunal/High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded in computing period of limitation of adjudication order:**

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the time limit for passing adjudication order, where proceedings are initiated by way of issue of a SCN under sections 73 and 74.



Clarification with regard to applicability of provisions of Section 75(2) of CGST Act, 2017 and its effect on limitation [Circular No. 185/17/2022-GST dated 27/12/2022]

Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued u/s 73(1), especially in cases where time limit for issuance of order as per section 73(10) has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued u/s 73(1).

Issue	Clarification
Where the show cause notice has been issued by the proper officer to a noticee u/s 74(1) of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable u/s 74(1) of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued u/s 73(1) of CGST Act, in accordance with Section 75(2) of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	In cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued u/s 73(1) of CGST Act in accordance with Section 75(2) of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in u/s 75(3) of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.

Issue: How the amount payable by the noticee, deeming the notice to have been issued u/s 73(1), shall be re-computed/ re-determined by the proper officer as per Section 75(2)?

Clarification: In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of Section 75(2) of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of Section 73(2), read with Section 73(10) of CGST Act.

- (1) Section 73(2) of CGST Act provides that such show cause notice shall be issued **at least 3 months prior to the time limit specified in Section 73(10) for issuance of order.**
- (2) As per Section 73(9) of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order.



- (3) As per Section 73(10) of CGST Act, an order u/s 73(9) has to be issued by the proper officer within **3 years from the due date for furnishing of annual return** for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or **from the date of erroneous refund**.

Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued u/s 73(1) of CGST Act in terms of Section 75(2) of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified u/s 73(2) read with Section 73(10) of CGST Act. **Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year/ from the date of erroneous refund.**

Proceedings to be dropped if SCN is issued after 2 years 9 months from due date of annual return/date of erroneous refund

In case, where the show cause notice u/s 74(1) was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable u/s 74(1) of CGST Act thereby deeming the notice to have been issued u/s 73(1), **the entire proceeding shall have to be dropped**, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice u/s 74(1) of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, **the entire proceeding shall have to be dropped**.

In cases, where the show cause in terms of Section 74(1) of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, **the entire amount of the said demand in the show cause notice would be covered under re-determined amount.**

SCN issued for multiple financial years

Where the show cause notice u/s 74(1) was issued **for multiple financial years**, and where notice had been issued before the expiry of the time period as per Section 73(2) for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in Section 73(2).



DEMAND AND RECOVERY FORMS

Communication of the details of any tax, interest and penalty as ascertained by the Proper Officer before service of notice u/s 73(1) or 74(1)	Part A of GST DRC- 01A
After receiving DRC-01A, submissions filed against the proposed liability by the taxpayer	Part B of GST DRC- 01A
A summary of demand has to be furnished electronically along with Show Cause Notice by the proper officer	GST DRC 01
In case of extended period a summary of demand has to be furnished electronically	GST DRC 02
Assessee shall voluntary intimate the proper officer of payment of tax plus interest (if paid within 30 days)	GST DRC 03
The proper officer shall issue an acknowledgement, accepting the payment made by the said person	GST DRC 04
The proper officer shall issue an order concluding the proceedings in respect of the show cause notice	GST DRC 05
The assessee will reply/make representation against SCN within the prescribed time or extended time.	GST DRC 06
A summary of the order issued shall be uploaded electronically specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. This order shall be treated as Recovery Notice.	GST DRC 07
Any rectification of the order, or withdrawal of the order, shall be made by the proper officer	GST DRC 08

TAX COLLECTED BUT NOT PAID TO GOVERNMENT [SECTION 76]

1. Amount representing tax collected from any person to be paid to the Central Government [Section 76(1)]

Every person who has collected any amount as representing the GST and has not paid same to the Government, is required to pay said amount with interest, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

This provision **overrides** anything to the contrary **contained in any order/direction of any Appellate Authority or Appellate Tribunal or court** or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force

2. Issue of SCN [Section 76(2)]

In case of failure, proper officer can issue a SCN to him proposing recovery and imposition of penalty equivalent to the amount specified in the notice.

**3. Determination of amount due [Section 76(3)]**

The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

4. Interest payable on the amount [Section 76(4)]

The person referred above shall in addition to paying the amount determined by proper officer also be liable to pay interest @18% p.a. from the date such amount was collected by him to the date such amount is paid by him to the Government.

An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

5. Time limit for issuance of order [Section 76(6) and 76(7)]

The proper officer shall issue a speaking order within **1 year** from the date of issue of the notice and such order issued in **Form GST DRC-07**. This order shall be treated as **Recovery Notice**. Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

6. Adjustment of amount payable under Section 76(1) and Section 76(3)

The amount paid to the Government under Section 76(1) 76(3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1). **[Section 76(9)]**

Where any surplus is left after the adjustment under Section 76(9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

**TAX WRONGLY COLLECTED AND PAID TO CENTRAL / STATE GOVERNMENT
[SECTION 77]**

- (a) In case of wrong charging and deposit of tax considering it to be intra-State supply which is later found to be inter-State supply, **the tax paid shall be refunded to the registered person**
- (b) However, in case of payment of tax considering the supply as inter-State which is later found to be intra-State supply, **no interest shall be payable on the amount of Central and State/UT tax paid.**

Similar provisions are contained in section 19 of the IGST Act, 2017



Relation between Section 77 of CGST Act, 2017 & Section 19 of IGST Act, 2017 [CBIC Circular No. 162/18/2021-GST dated 25th September 2021]

Relevant Section 77

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is “**subsequently held**” to be an inter-State supply, shall be refunded the amount of taxes so paid “**in such manner and subject to such conditions as may be prescribed**”.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is “**subsequently held**” to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Interpretation of the term “subsequently held”

It is clarified that the term “**subsequently held**” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

INITIATION OF RECOVERY PROCEEDINGS [Section 78]

- a) The adjudication order passed by proper officer in pursuant to demand SCN is to be treated as **recovery notice**.
- b) Any amount payable by a taxable person in pursuance of an order passed under this Act **shall be paid by such person within a period of 3 months from date of service of such order** failing which recovery proceedings shall be initiated:
- c) Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such **period less than a period of 3 months** as may be specified by him.

**RECOVERY OF TAX [Section 79]**

Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by **one or more of the following modes:**

A. Recovery by deducting from any money owed [Section 79(1)(a)]

The proper officer may deduct or may require any other specified officer **to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer** or such other specified officer. For this purpose, the proper officer shall issue **Form GST DRC-09**.

“Specified officer” shall mean any officer of CG/SG/UT/LA or of a Board or corporation or a company owned or controlled, wholly or partly, by the CG/SG/UT/LA **[Rule 143]**

B. Recovery by sale of goods under the control of proper officer: [Section 79(1)(b)]

The proper officer may recover or may require any other specified officer to recover the amount so payable by **detaining and selling any goods belonging to such person** which are under the control of the proper officer or such other specified officer. The sale will be by auction including e-auction by issuing a notice in **Form GST DRC-10**.

Perishable or hazardous goods can be auctioned immediately, but in other cases a 15 days’ notice is required. The successful bidder will be informed in **Form GST DRC-11** requiring him to make the payment within a period of **15 days** from the date of auction. On payment of full bid amount, the proper officer shall transfer the possession of the said goods by issuing a certificate in **Form GST DRC-12**. **[Rule 144]**

C. Recovery from a third person [Section 79(1)(c) read with [Rule 145]

(i) The proper officer may, by a notice in writing in **Form GST DRC 13**, require **any other person**

- (a) from whom money is due or may become due to such person or
- (b) who holds or may subsequently hold money for or
- (c) on account of such person,

to pay to the Government

- (a) either forthwith upon the money becoming due or being held, or
- (b) within the time specified in the notice not being before the money becomes due or is held,

so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

(ii) **Notice is binding on the third person:** Every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a **post office, banking company or an insurer**, it shall not be necessary to produce any pass book, deposit



DEMAND & RECOVERY

receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

- (iii) **Default in payment by third person:** in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, **he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;**
- (iv) The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.
- (v) Any person making any payment in compliance with the notice issued hereunder shall be deemed to have made the payment under the authority of the person in default.
- (vi) Further, such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt.
- (vii) Any person discharging any liability to the person in default after service on him of the notice shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.
- (viii) Where a person on whom a notice is served hereunder proves to the satisfaction of the officer issuing the notice that:
- (a) the money demanded/any part thereof was not due to the person in default or
 - (b) he did not hold any money for/on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person/be held for/on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.
- (ix) Recovery of defaulted money can be undertaken from such third person by issuing him a notice in Form **GST DRC-13** directing him to deposit the amount specified in the notice.
- (x) Where the third person makes the payment of the amount specified in the notice, the proper officer shall issue a certificate in **Form GST DRC 14** to the third person clearly indicating the details of the liability so discharged.

D. Recovery by sale of movable or immovable property: [Section 79(1)(d)]

The proper officer may, in accordance with the rules to be made in this behalf,

- (i) distrain any movable or immovable property belonging to or under the control of such person, and
- (ii) detain the same until the amount payable is paid; and
- (iii) in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of **30 days** next after any such distress,



may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person. The Proper Officer shall issue an order of attachment or distraint and a notice for sale in **Form GST DRC-16**.

E. Recovery through land revenue authority [Section 79(1)(e) read with Rule 155]

The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of certificate in **Form GST DRC 18**, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

F. Recovery through court [Section 79(1)(f) r/w Rule 156]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application in **Form GST DRC 19** to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him

G. Recovery through execution of a decree [Rule 146]

Where any amount is payable to the defaulter in the execution of a decree of a Civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in **Form GST DRC 15** to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

H. Recovery through surety [Rule 157]

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

I. Recovery from company in liquidation [Rule 160]

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in **Form GST DRC 24**.

J. Intimation of certain amounts liable to be recovered under section 79 of the Act [Rule 142B]

Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in **FORM GST DRC-01D**, directing the person in default to pay the said amount, along with applicable interest, or, as the case



DEMAND & RECOVERY

may the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in **FORM GST PMT-01**.

The intimation referred to in sub-rule (1) shall be treated as the **notice for recovery**.

Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.”.

Other provisions governing recovery of tax [Section 79(2)/(3)/(4)]

1. Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.
2. Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.
3. Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

For the purposes of this section, the word person shall include “**distinct persons**” as referred to Section 25(4) or, as the case may be, Section 25(5).

Example: LLT Limited has business places in all 29 states of India and accordingly registered with the GST authorities in each state. One of its branch located in Gujarat defaulted for payment of tax for the month of April 2019. Upon conclusion of adjudication proceedings, the authorities can proceed against any of the registration of LLT Limited located in 29 states although the default is made by of its branch located in Gujarat.

DEMAND AND RECOVERY FORMS

Summary of Order issued under existing laws	GST DRC 07A
Summary of rectification, modification or quashing of Order issued under existing laws	GST DRC 08A
Recovery by deduction from any money owed	
Order for recovery through specified officer under section 79	GST DRC 09
Recovery by sale of goods under the control of proper officer	
Notice for Auction of Goods u/s 79(1)(b) of the Act	GST DRC 10
Notice to successful bidder	GST DRC 11



Sale Certificate	GST DRC 12
Recovery from a Third Person	
Notice to a third person under section 79(1)(c)	GST DRC 13
Certificate of Payment to a Third Person	GST DRC 14
Recovery through execution of a decree, etc.	
Application before the civil court requesting execution for a decree	GST DRC 15
Recovery by sale of moveable or immovable property	
Notice for attachment and sale of immovable/movable goods/shares u/s 79	GST DRC 16
Notice for Auction of Immovable/Movable Property under section 79(1)(d)	GST DRC 17
Recovery through land revenue authority	
Certificate action u/s 79(1)(e)	GST DRC 18
Recovery through court	
Application to the Magistrate for Recovery as Fine	GST DRC 19
Other Forms	
Provisional attachment of property u/s 83	GST DRC 22
Restoration of provisionally attached property / bank account u/s 83	GST DRC 23
Intimation to Liquidator for recovery of amount	GST DRC 24
Continuation of Recovery Proceedings	GST DRC 25

Clarification on various issues relating to applicability of demand and penalty provisions under CGST Act in respect of transactions involving fake invoices

A number of cases have been noticed where the registered persons are found to be involved in issuing tax invoice (fake invoices), without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize ITC fraudulently.

Issue	Clarification
<p>In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both,</p> <p>(i) whether such transaction will be covered as supply under section 7?</p> <p>(ii) whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74?</p> <p>(iii) whether any penal action can be taken against registered person ‘A’ in such cases?</p>	<p>Since there has only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7.</p> <p>As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73/section 74 in respect of the same.</p>



DEMAND & RECOVERY

	<p>Besides, no penal action under the provisions of section 73/section 74 is required to be taken against 'A' in respect of the said transaction.</p> <p>The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods or services or both.</p>
<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73/section 74 or any other provisions of the CGST Act?</p>	<p>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b), he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, along with applicable interest under provisions of section 50. Further, as per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of the CGST Act, including under section 122.</p>
<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>In this case, the ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both.</p> <p>As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16(2)(b). In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction.</p> <p>Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction</p>



	<p>by 'B' to 'C' is required to be made from 'B' under the provisions of section 73/section 74.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS [SECTION 80]

- a) On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing,
- extend the time for payment or
 - allow payment of any amount due under this Act, **other than the amount due as per the liability self-assessed in any return,**
- by such person in **monthly instalments** not exceeding **24**, subject to payment of interest u/s 50 and subject to such conditions and limitations as may be prescribed:
- b) Provided that where there is default in payment of any **one instalment** on its due date, **the whole outstanding balance payable on such date shall become due and payable** forthwith and shall, **without any further notice being served on the person, be liable for recovery.**

Relevant Rule 158: Payment of Tax and other amounts in instalments

- (a) A taxable person, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments, shall furnish an application for the same in **Form DRC-20**.
- (b) The Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- (c) The Commissioner can allow payment with interest by issuing order in **Form DRC- 21** to defaulter in monthly installments not exceeding **24 installments** subject to payment of interest u/s 50 and subject to such conditions and limitations as may be prescribed.
- (d) In case of default in payment of **any one** installment on its due date, the whole outstanding balance payable on such date shall become due and shall, without any further notice being served on the person, be liable for recovery.
- (e) For seeking installment facility, taxable person can file application electronically in **Form GST DRC-20**.



DEMAND & RECOVERY

(f) The installment facility will not be allowed if:

- (i) The taxable person **has already defaulted** on the payment of any amount under GST law and **recovery process is already undergoing;**
- (ii) The taxable person has **not been allowed to make payment in installments** in the preceding financial year under GST law; and
- (iii) The amount for which instalment facility is sought is **less than ₹ 25,000.**

Application for Deferred Payment/ Payment in Instalments	GST DRC 20
Order for acceptance/rejection of application for deferred payment / payment in instalments	GST DRC 21

TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [SECTION 81]

(i) Where a person, after any amount has become due from him,

- creates a charge on or parts with the property belonging to him or in his possession
- by way of sale, mortgage, exchange, or any other mode of transfer whatsoever
- of any of his properties in favour of any other person

with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

(ii) However, such charge or transfer *shall not be void if*

- ***it is made for adequate consideration,***
- **in good faith** and
- without **notice of the pendency of such proceedings** under this Act or
- without **notice of such tax or other sum payable** by the said person, or
- with the **previous permission of the proper officer.**

TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

Notwithstanding anything to the contrary contained in any law for the time being in force, ***save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,***

any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government **shall be a first charge on the property** of such taxable person or such person.



PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [SECTION 83]

Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

Chapter XII – Assessment; Chapter XIV – Inspection, Search, Seizure and Arrest; Chapter XV – Demands and Recovery

The Commissioner for protecting the interest of the Government revenue, by order in writing in **Form GST DRC- 22** can attach provisionally any property, including bank account, belonging to the taxable person.

Every such provisional attachment shall cease to have effect after the expiry of a period of **1 year** from the date of the order.

CGST RULES RELEVANT TO PROVISIONAL ATTACHMENT

Provisional attachment of property [Rule 159]

- (a) Where the Commissioner decides to attach any property, including bank account in accordance with aforesaid provisions, he shall pass an order to that effect in **Form GST DRC-22** mentioning therein, the details of property which is attached.
- (b) The Commissioner shall send a copy of the order of attachment in **Form GST DRC -22** to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed on the written instructions from the Commissioner to that effect **or on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property**, whichever is earlier and a copy of such order shall also be sent to the person whose property is being attached under section 83.
- (c) Where the property attached is of perishable or hazardous nature, and if the person whose property has been attached pays:
 - (i) an amount equivalent to the market price of such property
 - OR
 - (ii) the amount that is or may become payable by such person

whichever is lower

then such property shall be released forthwith, by an order in Form GST DRC-23, on proof of payment.



DEMAND & RECOVERY

- (d) However, where such person fails to pay the amount referred above in respect of the said property of perishable/hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by such person.
- (e) Any person whose property is attached may file an objection in **Form GST DRC 22A** to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **Form GST DRC-23**.
- (f) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in **Form GST DRC-23**.

Attachment of debts and shares, etc [Rule 151]

A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in **Form GST DRC 16** prohibiting:

- (a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;
- (b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.

A debtor, prohibited hereunder, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

Attachment of property in custody of courts or Public Officer [Rule 152]

Where the property to be attached is in the custody of any Court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

Attachment of interest in partnership [Rule 153]

Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared



or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS
[SECTION 84]

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, ("**Government dues**"),

- is served upon any taxable person or any other person and
- any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then:

Case 1: Where such Government dues are enhanced in such appeal, revision or other proceedings,

The Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, **without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;**

Case 2: Where such Government dues are reduced in such appeal, revision or in other proceedings

- (i) It shall **not be necessary** for the Commissioner to serve upon the taxable person a **fresh notice of demand;**
- (ii) The Commissioner shall give **intimation of such reduction to him** and to the appropriate authority **with whom recovery proceedings is pending;**
- (iii) **Any recovery proceedings initiated on the basis of the demand served** upon him prior to the disposal of such appeal, revision or other proceedings **may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.**
- (iv) The order for the reduction or enhancement of any demand under Section 84 shall be issued in **Form GST DRC-25.**



SNAPSHOT OF FORMS UNDER DEMAND AND RECOVERY

Form No	Particulars
DRC 01	Summary of Show Cause Notice
DRC 02	Summary of Statement
DRC 03	Intimation of payment made voluntarily or made against the show cause notice or statement
DRC 04	Acknowledgement of acceptance of payment made voluntarily
DRC 05	Intimation of conclusion of proceedings
DRC 06	Reply to show cause notice issued by proper officer
DRC 07	Summary of order specifying tax, interest and penalty payable by the person
DRC 08	Rectification of order issued by proper officer
DRC 09	Order for recovery through specified officer u/s 79 (1)(a) (recovery by deduction from money owed)
DRC 10	Notice for auction of goods u/s 79(1)(b) indicating goods to be sold and its purpose
DRC 11	Notice issued to successful bidder requiring him to pay within 15 days from date of auction
DRC 12	Issue of sale certificate by proper officer on transfer of possession of goods
DRC 13	Notice issued to a third person for recovery of demand u/s 79(1)(c)
DRC 14	Certificate of payment made to third person indicating details of liability discharged
DRC 15	Application before the Civil Court requesting for execution for a decree
DRC 16	Notice for attachment and sale of immovable/moveable goods/shares u/s 79
DRC 17	Notice for auction of immovable/moveable property u/s 79(1)(d)
DRC 18	Issue certificate to collector to recover amount specified in certificate as arrears of land revenue
DRC 19	Application to Magistrate for recovery as fine
DRC 20	Application for deferred payment/ payment in instalments u/s 80
DRC 21	Order for acceptance/ rejection of application for deferred payment/ payment in instalments
DRC 22	Order of Provisional attachment of property u/s 83
DRC 23	Restoration of provisionally attached property/ bank account u/s 83
DRC 24	Intimation to Liquidator for recovery of amount
DRC 25	Order of continuation of recovery proceedings



**Standard Operating Procedure to be followed in case of non-filers of returns
[Circular No. 129/48/2019 – GST dated 24/12/2019]**

Consequences of non-filing of returns

- (a) Section 46 requires issuance of a **notice in FORM GSTR-3A** to a registered person who fails to furnish return u/s 39, 44 or 45 (“defaulter”) requiring him to furnish such return within 15 days. On failure to file return, best Judgement can be issued in **Form ASMT-13** without any further communication.
- (b) Section 62 provides for **assessment of non-filers of return** of registered persons who fails to furnish return u/s 39 or section 45 even after service of notice u/s 46.

Following guidelines are hereby prescribed:

- 1) A system generated message would be sent to all the registered persons **3 days before the due date** to nudge them about filing of the return for the tax period by the due date.
- 2) Once the due date of return u/s 39 is over, **a system generated mail / message would be sent to all the defaulters** immediately after the due date that the registered person has not furnished his return for the tax period.
- 3) **5 days after the due date of return**, a notice in FORM GSTR-3A shall be issued to such registered person who fails to furnish return u/s 39, requiring him to furnish such return within 15 days;
- 4) In case return is still not filed by the defaulter within 15 days of notice, the proper officer may proceed to assess the tax liability u/s 62 of the CGST Act, to the best of his judgement by passing assessment order in Form **ASMT-13**.
- 5) In case the defaulter furnishes a valid return within **30 days** of the service of assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn u/s 62. However, if the said return remains unfurnished within **30 days** from issuance of order in **FORM ASMT-13**, then proper officer may initiate proceedings u/s 78 and recovery u/s 79 of the CGST Act.
- 6) In deserving cases, based on the facts of the case, the Commissioner may resort to **provisional attachment to protect revenue** u/s 83 of the CGST Act before issuance of FORM GST ASMT-13.

The proper officer would initiate action u/s 29(2) of the CGST Act for **cancellation of registration** in case where the return has not been furnished for continuous period of 6 months.